

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FRANKLIN BUONO,	X	
	:	
	:	
<i>Plaintiff,</i>	:	Civil Action No. 7:17-cv-05915 (PMH)
	:	
v.	:	
	:	
POSEIDON AIR SYSTEMS, VICTORY AUTO	:	
STORE, INC., VICTORY AUTO STORES, INC.	:	
d/b/a POSEIDON AIR SYSTEMS,	:	
WORTHINGTON INDUSTRIES, INC., AND	:	
TYCO FIRE PRODUCTS LP,	:	
	:	
<i>Defendants.</i>	:	
	:	
TYCO FIRE PRODUCTS LP,	-X	
	:	DECLARATION IN OPPOSITION
	:	
<i>Third-Party Plaintiff,</i>	:	
	:	
v.	:	
	:	
OPRANDY'S FIRE & SAFETY INC.,	:	
	:	
<i>Third-Party Defendant.</i>	:	
	-X	

KENNETH FROMSON, an attorney duly admitted to practice law in United States District Court for the Northern District of New York, declares under the penalties of perjury, pursuant to 28 U.S.C. 1746, that the following is true and correct:

1. I am a partner with the law firm of Finkelstein & Partners, Co-Counsel to attorneys of record for Plaintiff Franklin Buono, ("Plaintiff), in the above-captioned matter and as such am fully familiar with the facts and circumstances of this case set forth below from review of the file and personal knowledge, and as to which I would be competent to testify on the matters stated.

2. This declaration is submitted in opposition to the motion of Defendant Tyco Fire Products LP (“Defendant”) for summary judgment for a dismissal of Plaintiff’s claims against it and to set forth the evidence in the record submitted as exhibits herewith.

3. Plaintiff’s action arose after he was seriously injured when in the course of his employment with Oprandy’s Fire & Safety Inc., a test tank manufactured and supplied by Defendant exploded as his co-worker Chris Foust was attempting to fill it with air.

4. As Defendant’s counsel states in his Declaration in support of Defendant’s motion, Plaintiff’s action thereafter was initially commenced in New York State Supreme Court for Orange County by filing the summons and complaint with the Clerk of Orange County on June 15, 2017, and it subsequently was removed to this Court on or about August 4, 2017. Plaintiff’s claims against Defendant lie for its violations of regulatory and industry standards of care with respect to the absence of labelling on its test tank, the absence of any information in its manuals or any other written materials as to the test tank, and the absence of any training as to the test tank, in addition to claims as to breach of warranty and manufacturing defect.

**Exhibits**

5. **Exhibit A (“Ex A”):** Attached hereto is a true and correct copy of the Declaration of Plaintiff Franklin Buono dated April 22, 2021.

6 **Exhibit B (“Ex B”):** Attached hereto is a true and correct copy of the deposition of Plaintiff Franklin Buono conducted on 4/30/18, the entirety of which is also attached to Defendant’s motion papers as its Exhibit 1.

7. **Exhibit C (“Ex C”):** Attached hereto is a true and correct copy of the deposition of Oprandy’s witness Brian Scott conducted on May 2, 2018, the entirety of which is also attached to Defendant’s motion papers as its Exhibit 11.

8. **Exhibit D (“Ex D”)**: Attached hereto is a true and correct copy of the transcript of the deposition of Worthington Industries Inc.’s witness James Getters conducted on July 30, 2018.

9. **Exhibit E (“Ex E”)**: Attached hereto is a true and correct copy of the transcript of the deposition of Robert Hawkins conducted on October 29, 2019.

10. **Exhibit F (“Ex F”)**: Attached hereto is a true and correct copy of the transcript of the deposition of Defendant’s witness Curtis Harding conducted on September 12, 2019, the entirety of which is also attached to Defendant’s motion as its Exhibit 9.

11. **Exhibit G (“Ex G”)**: Attached hereto is a true and correct copy of the transcript of the deposition of Defendant’s witness Director of Engineering, Adam Menor, conducted on September 12, 2019, the entirety of which is also attached to Defendant’s motion as its Exhibit 8.

12. **Exhibit H (“Ex H”)**: Attached hereto are true and correct copies of screenshots from the Fire Protection Consultants Ltd website, [www.fpc ltd.com](http://www.fpc ltd.com), which sets forth:

Welcome to Fire Protection Certification on the Web. I'm Edward O'Brien, President. We've developed this website for Fire Protection Servicing Companies and AHJ's. Designed to provide access to our course schedule as well as relevant information on our seminars.

Fire Protection Consultants was established in 1985 to provide a training service for Fire Protection Servicing Companies. The first training seminars offered were the Kitchen Hood Suppression System Servicing program, which is the most popular seminar presently

Under its Fire Protection Certification Seminars, the website lists:

<p><b><u>Commercial</u></b> <b><u>Kitchen Fire</u></b> <b><u>Suppression</u></b> <b><u>System</u></b> <b><u>Servicing</u></b></p>	<p><b>Servicing and recharging procedures of kitchen hood and duct extinguishing systems per NFPA 96, 17 and 17A and IFC, ICC.</b></p> <p><b>FPC's Commercial Kitchen Fire System Servicing seminar meets the requirements of NFPA 17, 17A, and 96, and IFC pertaining to the service and maintenance of commercial cooking facilities, hood, duct and appliance fire suppression systems. The NFPA defines a trained person as one who has undergone the instructions necessary to perform maintenance and recharge reliably. The seminar also covers training and testing in one day. The testing includes</b></p>
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	<p>questions on the subjects covered as well as hands-on working on the various system displays. The test demonstrates the person's ability to perform the service and maintenance, interpret the manufacturers manuals pertaining to servicing and an understanding of the NFPA requirements on servicing of pre-engineered Commercial Kitchen Fire Suppression Systems. The passing grade is 70%. This seminar is offered just about every other week at various locations throughout the US and Canada (see schedule). Class size is limited. In addition to our one day seminars FPC offers more extensive training on Commercial Kitchen Fire Suppression Systems; call 888-670-2965 or email <a href="mailto:info@fpcltd.com">info@fpcltd.com</a> for more information.</p>
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13. **Exhibit I (“Ex I”):** Attached hereto are true and correct copies of the Declaration of Thomas Taranto dated April 23, 2021 and his affirmed expert report dated January 8, 2020 with curriculum vitae.

14. **Exhibit J (“Ex J”):** Attached hereto is a true and correct copy of the deposition of Thomas Taranto conducted on June 25, 2020, the entirety of which is also attached to Defendant’s motion papers as its Exhibit 4.

15. **Exhibit K (“Ex K”):** Attached hereto is a true and correct copy of the Affidavit of Thomas Taranto duly sworn to on October 30, 2020.

16. **Exhibit L (“Ex L”):** Attached hereto is a true and correct copy of screenshot from Oprandy’s Fire and Safety, Inc., website, <https://oprandysfire.com>.

Wherefore, based upon the evidence in the record and the reasons set forth in the accompanying Memorandum of Law in Opposition, it is respectfully requested that Defendant’s motion for summary judgment be denied in its entirety, and that Plaintiff be granted such other relief that to the Court is just and proper.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: April 23, 2021  
Newburgh, New York

*Ken Fromson*

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Kenneth Fromson